

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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ESSEX INSURANCE COMPANY,

Plaintiff,

v.

Case No. 11-12293

XTREME FITNESS STERLING HEIGHTS and  
FRANK ALAMPI,

Defendants.

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**ORDER DIRECTING PARTIES TO FILE SUPPLEMENTAL BRIEFING**

On May 25, 2011, Plaintiff Essex Insurance Company ("Essex") initiated this action seeking a declaratory judgment that it has no duty to defend or indemnify Defendant xTreme Fitness Sterling Heights ("xTreme Fitness"), its insured, in an action filed by Defendant Frank Alampi in Macomb County Circuit Court. Pending before the court are Plaintiff's motions for default judgment as to Defendant xTreme Fitness and for summary judgment as to Defendant Alampi. Defendant xTreme Fitness failed to file a responsive pleading in this action and the Clerk of the Court entered default against it on August 29, 2011. During the September 1, 2011 scheduling conference, the court informally raised with counsel for Plaintiff and Defendant Alampi its concern about whether an actual controversy exists between their respective clients as required by both Article III, Section 2, of the United States Constitution and the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201-02. Neither party, however, addressed this important issue in the summary judgment briefing. The court will therefore direct the parties to file supplemental briefs specifically addressing whether an actual controversy exists

between Plaintiff Essex and Defendant Alampi, especially given the Clerk's entry of default against Defendant xTreme Fitness and Plaintiff's motion for default.

Accordingly,

IT IS ORDERED that Plaintiff Essex Insurance Company is DIRECTED to file a supplemental brief on or before **February 8, 2012**.

IT IS FURTHER ORDERED that Defendant Frank Alampi is DIRECTED to file a response to Plaintiff's supplemental brief on or before **February 13, 2012**.

S/Robert H. Cleland  
ROBERT H. CLELAND  
UNITED STATES DISTRICT JUDGE

Dated: February 2, 2012

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, February 2, 2012, by electronic and/or ordinary mail.

S/Lisa G. Wagner  
Case Manager and Deputy Clerk  
(313) 234-5522